

Assembly Bill No. 10

CHAPTER 1

An act to amend Section 39612 of, and to add Section 39613 to, the Health and Safety Code, and to amend Section 13260 of, and to add Sections 13260.2 and 13260.3 to, the Water Code, relating to resources.

[Approved by Governor March 18, 2003. Filed with
Secretary of State March 18, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 10, Oropeza. Resources.

(1) Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law authorizes each district to establish a permit system that requires, except as specified, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants, the person obtain a permit from the air pollution control officer of the district. Existing law also authorizes each district board to adopt, by regulation, a schedule of annual fees for the evaluation, issuance, and renewal of those permits. Existing law authorizes the State Air Resources Board to require districts to impose additional permit fees on nonvehicular sources within their jurisdiction for the purposes of recovering costs of additional state programs related to those sources. Existing law requires that priority for expenditure of those permit fees be given to specified activities relating to air pollution from nonvehicular sources, and requires that those permit fees be collected from nonvehicular sources that are authorized by district permits to emit 500 tons or more per year of any nonattainment pollutant or its precursors. Existing law also limits the total amount of funds collected by those permit fees, exclusive of district administrative costs, to \$3,000,000 in any fiscal year.

This bill would authorize the state board to impose additional permit fees directly on nonvehicular sources within a district's jurisdiction. The bill would also authorize the state board to require a district to collect those fees, to establish a system for direct collection of those fees by the state board, and to contract with any other state agency for the collection of those fees. The bill would lower the threshold emission level for the imposition of the permit fees on nonvehicular sources by requiring those fees to be collected from nonvehicular sources that are authorized by the district to emit 250 tons or more per year of any nonattainment pollutant

or its precursors. The bill would increase the limit on the total amount of funds that may be collected by the districts in permit fees to \$13,000,000 and would authorize the state board to increase that limitation by an amount not to exceed the annual percentage change in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations. The additional duties for districts under this bill would impose a state-mandated local program.

(2) Existing law requires the state board to adopt regulations to achieve the maximum feasible reduction in volatile organic compounds emitted by consumer products, as defined, if the state board determines that the regulations are necessary to attain state and federal air quality standards, and that the regulations are commercially and technologically feasible and necessary. Existing law also requires the state board, on or before January 1 of each year, to report to the Governor and the Legislature on the expenditure of permit fees collected from nonvehicular sources.

This bill would require the state board to impose a fee for any consumer product and any architectural coating sold in the state, if a manufacturer's total sales of consumer products or architectural coatings will result in the emission in the state of 250 tons per year or greater of volatile organic compounds. The bill would require revenues collected from the imposition of the fee to be used to mitigate or reduce air pollution in the state created by consumer products and architectural coatings, as determined by the state board, and that the revenues be expended solely for those programs. The bill would require that the fees be transmitted to the Controller for deposit in the Air Pollution Control Fund, after deducting the administrative cost of collecting the fees. The bill would require the state board to include a report on the expenditure of permit fees collected from consumer products and architectural coatings in its report to the Governor and the Legislature on the expenditure of the permit fees collected from nonvehicular sources.

(3) Existing law makes a violation of any rule, regulation, permit, or order of the state board or of a district a misdemeanor. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(4) The Porter-Cologne Water Quality Control Act, with certain exceptions, imposes on a person for whom waste discharge requirements have been prescribed, an annual fee established by the State Water Resources Control Board, not to exceed \$20,000, but subject to an annual adjustment, on the basis of total flow, volume, number of animals, threat to water quality, and area involved. Under the act, the fees are deposited in the Waste Discharge Permit Fund, which is expended, upon appropriation, for the purposes of carrying out the act. The act requires all or part of the fees to be refunded if waste discharge

requirements are waived. The act makes a person failing to pay a waste discharge fee, if requested to do so by a California regional water quality control board, guilty of a misdemeanor.

This bill, instead, would require each person who is required to file a waste discharge report to submit an annual fee according to a fee schedule established by the state board. The bill would require the total amount of annual fees to equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements. The bill would require each person that discharges waste in a manner regulated by the provisions of law that require filing of a waste discharge report to pay an annual fee to the state board, and would require the state board to establish a timetable by regulation, for the payment of the annual fee. The bill would require all or part of the annual fees to be refunded if the state board or a regional board determines that the discharge will not affect, or have the potential to affect, the quality of the waters of the state. The bill would delete a provision that exempts certain facilities for confined animal feeding and holding operations from the annual fee requirement. Because failure to pay the annual fee under certain circumstances is a crime, this bill would impose a state-mandated local program by expanding the scope of that crime. The bill would require the state board, in establishing the amount of the fee that may be imposed on confined animal feeding and holding operations, to consider factors relating to the size of the operation, the type and amount of discharge, the pricing mechanism of the commodities produced, the existing regulation of the operation, and whether the operation participates in a quality assurance program.

The bill would require the state board to establish a fee in an amount sufficient to recover its costs in reviewing, processing, and enforcing “no exposure” certifications issued to facilities that apply for those certifications in accordance with a general industrial stormwater permit. The bill would require revenue generated pursuant to this provision to be deposited in the Waste Discharge Permit Fund.

The bill would require the state board, on or before January 1 of each year, to report to the Governor and the Legislature on the expenditure of the annual fees on waste discharges.

(5) The bill would provide that the Legislature shall appropriate, on or before June 30, 2006, \$58,104,000 from the General Fund to the Department of Water Resources for allocation to certain local entities to pay the state’s share of certain nonfederal costs of flood control projects that have been adopted and authorized.



(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 39612 of the Health and Safety Code is amended to read:

39612. (a) In addition to funds that may be appropriated by the Legislature to the state board to carry out the additional responsibilities and to undertake necessary technical studies required by this chapter, the state board may impose additional permit fees on nonvehicular sources within a district's jurisdiction.

(b) (1) The state board may do any of the following with respect to the collection of fees on nonvehicular sources imposed pursuant to subdivision (a):

(A) Upon obtaining the concurrence of the district, require a district to collect the fees.

(B) Establish a system in which the state board collects the fees directly.

(C) Contract with any other state agency to collect the fees.

(2) If the state board establishes a system to collect fees pursuant to subparagraph (B) of paragraph (1) or contracts with another state agency to collect the fees pursuant to subparagraph (C) of paragraph (1), each district shall provide any information necessary to ensure the accurate and efficient collection of the fees from nonvehicular sources.

(c) The permit fees imposed pursuant to this section shall be expended only for the purposes of recovering costs of additional state programs related to nonvehicular sources. Priority for expenditure of permit fees collected pursuant to this section shall be given to the following activities:

(1) Identifying air quality-related indicators that may be used to measure or estimate progress in the attainment of state ambient air standards pursuant to subdivision (f) of Section 39607.

(2) Establishing a uniform methodology for assessing population exposure to air pollutants pursuant to subdivision (g) of Section 39607.

(3) Updating the emission inventory pursuant to Section 39607.3, including emissions that cause or contribute to the nonattainment of federal ambient air standards.

(4) Identifying, assessing, and establishing the mitigation requirements for the effects of interbasin transport of air pollutants pursuant to Section 39610.

(5) Updating the state board's guidance to districts on ranking control measures for stationary sources based upon the cost-effectiveness of those measures in reducing air pollution.

(d) The permit fees imposed pursuant to this section shall be collected from nonvehicular sources that are authorized by district permits to emit 250 tons or more per year of any nonattainment pollutant or its precursors.

(e) The permit fees collected pursuant to this section and Section 39613, after deducting the administrative costs of collecting the fees, shall be transmitted to the Controller for deposit in the Air Pollution Control Fund.

(f) (1) The total amount of funds collected by fees imposed pursuant to this section, exclusive of district administrative costs, may not exceed thirteen million dollars (\$13,000,000) in any fiscal year, unless that limitation is increased pursuant to paragraph (2).

(2) The state board may increase the limitation on the total amount of funds collected as described in paragraph (1) by an amount not to exceed the annual percentage change in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

(g) On or before January 1 of each year, the state board shall report to the Governor and the Legislature on the expenditure of permit fees collected pursuant to this section and Section 39613. The report shall include a report on the status of implementation of the programs prioritized for funding pursuant to subdivision (c).

SEC. 2. Section 39613 is added to the Health and Safety Code, to read:

39613. The state board shall impose a fee for any consumer product, as defined in Section 41712, sold in the state and any architectural coating sold in the state if a manufacturer's total sales of consumer products or architectural coatings will result in the emission in the state of 250 tons per year or greater of volatile organic compounds. Revenues collected from the imposition of this fee shall be used to mitigate or reduce air pollution in the state created by consumer products and architectural coatings, as determined by the state board, and shall be expended solely for those programs.

SEC. 3. Section 13260 of the Water Code is amended to read:

13260. (a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) Any person operating, or proposing to construct, an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) (A) Each person who is subject to subdivision (a) or (c) shall submit an annual fee according to a fee schedule established by the state board.

(B) The total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements.

(C) Recoverable costs may include, but are not limited to, costs incurred in reviewing waste discharge reports, prescribing terms of waste discharge requirements and monitoring requirements, enforcing and evaluating compliance with waste discharge requirements and waiver requirements, conducting surface water and groundwater monitoring and modeling, analyzing laboratory samples, and reviewing documents prepared for the purpose of regulating the discharge of waste, and administrative costs incurred in connection with carrying out these actions.

(D) In establishing the amount of a fee that may be imposed on any confined animal feeding and holding operation pursuant to this section, including, but not limited to, any dairy farm, the state board shall consider all of the following factors:

(i) The size of the operation.

(ii) Whether the operation has been issued a permit to operate pursuant to Section 1342 of Title 33 of the United States Code.

(iii) Any applicable waste discharge requirement or conditional waiver of a waste discharge requirement.

(iv) The type and amount of discharge from the operation.

(v) The pricing mechanism of the commodity produced.

(vi) Any compliance costs borne by the operation pursuant to state and federal water quality regulations.

(vii) Whether the operation participates in a quality assurance program certified by a regional water quality control board, the state board, or a federal water quality control agency.

(2) (A) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund, which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, solely for the purposes of carrying out this division.

(B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

(ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region.

(iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.

(3) Any person who would be required to pay the annual fee prescribed by paragraph (1) for waste discharge requirements applicable to discharges of solid waste, as defined in Section 40191 of the Public Resources Code, at a waste management unit that is also regulated under Division 30 (commencing with Section 40000) of the Public Resources Code, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the waste management unit imposed by paragraph (1) upon verification by the state board of payment of the fee imposed by Section 48000 of the Public Resources Code, and provided that the fee established pursuant to Section 48000 of the Public Resources Code generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the Legislature for those purposes is not reduced.

(e) Each person discharges waste in a manner regulated by this section shall pay an annual fee to the state board. The state board shall establish, by regulation, a timetable for the payment of the annual fee. If the state board or a regional board determines that the discharge will not affect, or have the potential to affect, the quality of the waters of the state, all or part of the annual fee shall be refunded.

(f) (1) The state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivision (d). The total revenue collected each year through annual fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the Budget Act, the state board may further adjust the annual fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, any amendment thereto, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the national pollutant discharge elimination system until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the



Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.

(k) In addition to the report required by subdivision (a), before any person discharges mining waste, the person shall first submit both of the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

(l) Except upon the written request of the regional board, a report of waste discharge need not be filed pursuant to subdivision (a) or (c) by a user of recycled water that is being supplied by a supplier or distributor of recycled water for whom a master recycling permit has been issued pursuant to Section 13523.1.

SEC. 4. Section 13260.2 is added to the Water Code, to read:

13260.2. (a) The state board shall establish a fee in an amount sufficient to recover its costs in reviewing, processing, and enforcing “no exposure” certifications issued to facilities that apply for those certifications in accordance with a general industrial stormwater permit.

(b) Revenue generated pursuant to this section shall be deposited in the Waste Discharge Permit Fund.

SEC. 5. Section 13260.3 is added to the Water Code, to read:

13260.3. On or before January 1 of each year, the state board shall report to the Governor and the Legislature on the expenditure of annual fees collected pursuant to Section 13260.

SEC. 6. (a) The Legislature hereby finds and declares all of the following:

(1) Adjustments made to the Budget Act of 2002 in the 2003–04 First Extraordinary Session reverted fifty-eight million one hundred four thousand dollars (\$58,104,000) to the General Fund.

(2) These funds were originally appropriated by Section 8 of Chapter 326 of the Statutes of 1998 to pay for the state's share of the nonfederal costs of flood control projects that have been adopted and authorized in accordance with one or more of the following provisions of law:

(A) State Water Resources Law of 1945 (Ch. 1 (commencing with Sec. 12570) and Ch. 2 (commencing with Sec. 12639), Pt. 6, Div. 6, Wat. C.).

(B) Flood Control Law of 1946 (Ch. 3 (commencing with Sec. 12800), Pt. 6, Div. 6, Wat. C.).

(C) California Watershed Protection and Flood Prevention Law (Ch. 4 (commencing with Sec. 12850), Pt. 6, Div. 6, Wat. C.).

(b) The Legislature, on or before June 30, 2006, shall appropriate fifty-eight million one hundred four thousand dollars (\$58,104,000) from the General Fund to the Department of Water Resources for allocation, in accordance with Section 8 of Chapter 326 of the Statutes of 1998, to the local entities with whom the state has agreements to pay the state's share of the nonfederal costs of flood control projects.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

